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6

7 **UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

8 UNITED STATES OF AMERICA, )  
 )  
9 Plaintiff, )  
 )  
10 v. ) 2:09-CR-508-KJD (LRL)  
 )  
11 FRANCISCO JAVIER FRANCO )  
 )  
12 Defendant. )  
13 \_\_\_\_\_ )

14 **UNITED STATES' UNOPPOSED MOTION TO**  
15 **CONTINUE THE DATE TO RESPOND TO LOWELL**  
**WAYNE TOLIVER'S MOTION FOR RETURN OF PROPERTY**  
16 **(Second Request)**

17 The United States of America ("United States"), by and through Daniel G. Bogden, United  
18 States Attorney for the District of Nevada and Michael A. Humphreys, Assistant United States  
19 Attorney, respectfully moves this Court to grant an extension of time, until and including March 29,  
20 2012, for the United States to file its response to Lowell Wayne Toliver's Motion To Return  
21 Property:

22 The Government's Opposition is currently due on February 28, 2012. Lowell Wayne  
23 Toliver, proceeding *pro se*, consents to this motion. In this case, the defendant, Francisco Franco,  
24 was indicted on December 16, 2009, for, amongst other things, being a felon in possession of a  
25 firearm. On September 16, 2010, defendant Franco pled guilty to brandishing a firearm during a  
26 crime of violence. As a condition of that plea agreement, the defendant consented to the criminal

1 forfeiture of the firearm, to wit: a .357 magnum revolver, seized from him coincident to his arrest.  
2 The United States learned through its own investigation that Lowell Wayne Toliver was the true  
3 owner of that Smith & Wesson .357 revolver. The United States Attorney for the District of Nevada  
4 formally notified Mr. Toliver about the gun and consistent with that notification, Mr. Toliver filed  
5 his Motion for Return of Property on January 12, 2012.

6 Pursuant to that filing, this Court ordered the United States to file its opposition to Mr.  
7 Toliver's motion by February 28, 2012. The parties are in the midst of negotiating a settlement of  
8 this matter, and once executed and presented to this Court for ratification, the litigation will be  
9 complete, vitiating the need for the Government to file a response to Mr. Toliver's motion. This  
10 matter should be settled by March 29, 2012.

11 As noted above, Government counsel discussed the matter of a government continuance with  
12 Lowell Wayne Toliver on February 28, 2012, and Mr. Toliver gave Government counsel  
13 authorization to represent to this Court that he, (Mr. Toliver) consents to this motion.

14 This motion is not submitted solely for the purpose to delay or for any other improper  
15 purpose.

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1 WHEREFORE, , the United States moves this Court to grant its motion to extend the time  
2 for the United States to file its Response To Lowell Wayne Toliver's Motion For Return of Property  
3 for an additional 30 days, or until March 29, 2012.

4 DATED this 28th day of February, 2012.

5 Respectfully submitted,

6 DANIEL G. BOGDEN

7 United States Attorney

8  
9 /s/Michael A. Humphreys  
10 MICHAEL A. HUMPHREYS

11  
12  
13 IT IS SO ORDERED:

14 

15 UNITED STATES DISTRICT JUDGE

16 DATED: 3/1/12

**PROOF OF SERVICE**

I, Elizabeth Baechler-Warren, Forfeiture Support Associate Paralegal, certify that the following individual was served with a copy of the foregoing on February 28, 2012, by the below identified method of service:

CM/ECF:

Raquel Lazo  
Federal Public Defender  
411 E. Bonneville Ave.  
Las Vegas, NV 89191  
Email: ECF\_Vegas@fd.org  
Counsel for Defendant Francisco Javier Franco

By Regular Mail on 2/29/2012:

Lowell Wayne Toliver  
6321 Maxwood Court  
Las Vegas, NV 89122

/s/ Elizabeth Baechler-Warren  
Elizabeth Baechler-Warren  
Forfeiture Support Associate Paralegal